

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

238320



-----x
In re : Case No. 81 B 12024 (B
COMBE FILL CORPORATION, : DEBTOR'S OBJECTION TO
Debtor. : APPLICATION FOR
: ABANDONMENT
-----x

COMBE FILL CORPORATION, the Debtor herein ("Combe Fill"), by its attorneys, Anderson Russell Kill & Olick, P.C., respectfully represents and alleges:

1. Combe Fill is the Debtor herein, having filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Reform Act of 1978 ("Code"), 11 U.S.C. §301, et seq. on October 19, 1981. Combe Fill hereby objects to the application (the "Application") of Bruce D. Scherling, the trustee herein ("Trustee") dated May 20, 1985 for authorization to abandon two landfill sites in New Jersey, along with the records in connection therewith.

2. In the Application, the Trustee asserts that the two landfill sites, known as Combe Fill South and Combe Fill North are of inconsequential value to the estate and are burdensome to the estate. The Trustee asserts that he has consulted with appraisers and real estate consultants and has thus reached the foregoing conclusions. However, the Trustee declines to specify how many, or which real estate experts were

FILE

pm

consulted, or whether any attempt was made to sell these sites at public auction through the aegis of the Bankruptcy Court.

3. The Trustee further blithely asserts that the current state of the law "clearly contemplates and sanctions a Trustee abandoning landfill sites which are burdensome to the estate..." (Application ¶9). In support of this contention, the Trustee cites the decision of Ohio v. Kovacs, ____ U.S. ____, 105 S. Ct. 705 (1985). While the Trustee has not briefed this issue fully, and Combe Fill's objection does not purport to be a memorandum of law, which the Court might request on this issue, it is fair to say that the language in a footnote in Kovacs Court is, at best, dictum. The issue before the Kovacs was not abandonment, but whether the debtor's obligation to clean up a waste site was a "claim" and thus subject to discharge in bankruptcy. The footnote was a reference to the Trustee's possible options with respect to a piece of property, had the debtor filed a petition prior to a receiver having been appointed to administer the site. In fact, the Kovacs Court made this statement as part of its emphasis on what it was not deciding. 105 S.Ct. at 711.

4. The highest authority to have spoken on the precise issue of abandonment is the United States Court of Appeals for the Third Circuit, in In re Quanta Resources Corp. 739 F.2d 912 (3rd Cir. 1984), which has squarely held that the Code does not permit abandonment of property absent compliance

with environmental laws. The Quanta case is currently on appeal to the United States Supreme Court. Accordingly, Combe Fill submits that it is misleading, to say the least, to suggest, as the Trustee does, that this issue has been "put to rest" in favor of abandonment.

5. The Trustee argues that this Court approved settlement dated January 23, 1984 renders this issue moot in any event, since the New Jersey environmental authorities have settled with the Trustee regarding clean up claims. A preliminary review of the file by counsel for Combe Fill does not indicate that the Debtor was ever given notice of this proposed settlement. In view of the fact that abandonment might well re-vest the landfill sites in Combe fill, Combe Fill has surely been prejudiced by this settlement which purports to encompass only the Trustee. As a corporate debtor, in Chapter 7, Combe Fill is precluded from discharge.

6. Moreover, the Trustee has not demonstrated compliance with federal clean up provisions. Nor is it clear that he has satisfied possible claims of local authorities, other than postpetition tax claims.

7. As of the date of the settlement, the Trustee had in excess of \$412,000 in the estate, and likely has even more now. These funds should be used to satisfy claims of all creditors on a pro rata basis and the Trustee should not be permitted to abandon properties which may be subject to

indeterminate claims against a corporation which will have no assets with which to satisfy them.

WHEREFORE, Combe Fill respectfully requests that the Court deny the Trustee's application for abandonment and that it grant such other and further relief as is just.

Dated: New York, New York
June 7, 1985

ANDERSON RUSSELL KILL & OLICK, P.C.

By 

A Member of the Firm

Attorneys for Combe Fill
Corporation, Debtor
666 Third Avenue
New York, New York 10017
(212) 850-0700